

1 **LAW OFFICES OF DALE K. GALIPO**  
2 Dale K. Galipo, Esq. (Bar No. 144074)  
3 dalekgalipo@yahoo.com  
4 Hang D. Le, Esq. (Bar No. 293450)  
5 hlee@galipolaw.com  
6 21800 Burbank Boulevard, Suite 310  
7 Woodland Hills, California, 91367  
8 Telephone: (818) 347-3333  
9 Facsimile: (818) 347-4118

10 Attorneys for Plaintiffs  
11 JONATHAN WAYNE BOTTEN, SR.,  
12 TANJA DUDEK-BOTTEN, ANNABELLE BOTTEN,  
13 AND J.B.  
14

15 JONATHAN WAYNE BOTTEN, SR.;  
16 TANJA DUDEK-BOTTEN;  
17 ANNABELLE BOTTEN; and J.B., a  
18 minor, by and through his guardian  
19 JONATHAN WAYNE BOTTEN, SR.,

20 Plaintiffs,

21 vs.

22 STATE OF CALIFORNIA; COUNTY  
23 OF SAN BERNARDINO; ISAIAH  
24 KEE; MICHAEL BLACKWOOD;  
25 BERNARDO RUBALCAVA; ROBERT  
26 VACCARI; JAKE ADAMS; and DOES  
27 1-10, inclusive,

28 Defendants.

Case No. 5:23-cv-00257-KK-SHK

*Honorable Kenly Kiya Kato*

**PLAINTIFFS' REQUEST FOR THE  
COURT TO EXERCISE  
SUPPLEMENTAL JURISDICTION  
OVER PLAINTIFFS' STATE LAW  
CLAIMS**

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**  
2 **OF RECORD:**

3 Plaintiffs Jonathan Wayne Botten, Sr., Tanja Dudek-Botten, Annabelle Botten,  
4 and J.B., a minor by and through his guardian *ad litem* Jonathan Wayne Botten, Sr.  
5 (“Plaintiffs”) hereby submit this Request, by and through their counsel of record, for  
6 the Court to exercise supplemental jurisdiction over Plaintiffs’ state law claims for  
7 battery, negligence, negligent infliction of emotional distress, and violation of  
8 California Code Section 52.1 (Bane Act).

9 Plaintiffs filed this action on February 16, 2023, against Defendants State of  
10 California<sup>1</sup>, California High Patrol Officers Isaiah Kee, Michael Blackwood, and  
11 Bernardo Rubalcava, (together “State Defendants”), County of San Bernardino and  
12 County of San Bernardino Sheriff’s Deputies Robert Vaccari and Jake Adams  
13 (together “County Defendants”) (collectively “Defendants”), alleging federal claims  
14 of the Fourth Amendment and Fourteenth Amendment pursuant to 42 U.S.C. § 1983  
15 and state law claims of battery, negligence, negligent infliction of emotional distress,  
16 and violation of the Bane Act.

17 On January 30, 2025, State Defendants filed a Notice of Motion and Motion  
18 for Summary Judgment (“State Defendants’ MSJ”) on all claims.<sup>2</sup> (See Dkt. Nos. 86,  
19 87). On May 5, 2025, the Court issued an Order Granting in Part and Denying in Part  
20 State Defendants’ Motion for Summary Judgment. (Dkt. No. 120). Specifically, the  
21 Court denied summary judgment on Plaintiffs’ Fourth Amendment excessive force,  
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23 <sup>1</sup> The State of California was dismissed as a defendant on August 21, 2023 (See  
24 Dkt. No. 47).

25 <sup>2</sup> Prior to the filing of State Defendants’ MSJ, Plaintiffs and State Defendants  
26 reached an agreement to dismiss Defendant Blackwood from Plaintiffs’ Fourth  
27 Amendment, Fourteenth Amendment, battery, and Bane Act claim. A stipulation  
28 was filed subsequent to the filing of State Defendants’ MSJ and the Court dismissed  
Defendant Blackwood from the aforementioned claims on February 25, 2025 (see  
Dkt. No. 94).

1 battery, negligence, negligent infliction of emotional distress, and Bane Act claim as  
2 to Defendants Kee and Rubalcava, finding disputed issues of triable fact that  
3 precluded summary judgment, and that viewing the facts in the light most favorable  
4 to Plaintiffs, Kee and Rubalcava were not entitled to qualified immunity under  
5 Plaintiff's Fourth Amendment excessive force claim. (*See id.*). The Court granted  
6 summary judgment on Plaintiffs' Fourteenth Amendment substantive due process  
7 claim and Plaintiffs' negligence and negligent infliction of emotional distress with  
8 respect to Defendant Blackwood. (*See id.*).

9 On June 4, 2025, Defendants filed a Notice of Appeal to the Ninth Circuit  
10 (Dkt. No. 121) on the denial of qualified immunity under Plaintiffs' Fourth  
11 Amendment Excessive Force claim. ("State Defendants' Interlocutory Appeal). On  
12 July 9, 2025, County Defendants and Plaintiffs filed a stipulation to dismiss County  
13 Defendants from all claims. (Dkt. No. 126). Later that day, State Defendants and  
14 Plaintiffs filed a stipulation to dismiss Plaintiffs' Fourth Amendment claim (Dkt. No.  
15 127) and a stipulation to dismiss State Defendants' Interlocutory Appeal.

16 With the dismissal of County Defendants and Plaintiffs' Fourth Amendment  
17 claim, the only claims that remain are state law claims of battery, negligence,  
18 negligent infliction of emotional distress, and violation of California Code Section  
19 52.1 against Defendants Kee and Rubalcava. Plaintiffs request that the Court exercise  
20 its discretion to retain supplemental jurisdiction over the state law claim in order to  
21 avoid waste of judicial resources and further delay in bringing this case to trial.

22 "[A] federal court should consider and weigh in each case, and at every stage  
23 of the litigation, the values of judicial economy, convenience, fairness, and comity in  
24 order to decide whether to exercise jurisdiction over a case brought in that court  
25 involving pendent state-law claims." *Carnegie-Mellon University v. Cohill*, 484 U.S.  
26 343, 350 (1988). "Whether to dismiss or retain supplemental claims after dismissal of  
27 state law claims is 'fully discretionary' with the district court because it is the 'district  
28 judge who is in the best position to determine whether enough resources have been

1 expended to make dismissal a waste at any given point.”” *Golden Temple of Oregon,*  
2 *LLC v. Yogibotanicals Int'l Corp.*, No. CV 10-7736-VBF(FFMX), 2012 WL  
3 13005962, at \*1 (C.D. Cal. Feb. 22, 2012) (citing *Schneider v. TRW, Inc.*, 938 F.2d  
4 986, 993–94 (9th Cir. 1991)). The district court may exercise discretion to retain  
5 supplemental jurisdiction over state law claims even where the plaintiff voluntarily  
6 dismisses the federal claims. *See Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087,  
7 1091 (9th Cir. 2008) (noting plaintiff seeking dismissal of federal claims “does not  
8 divest the district court of its power to exercise supplemental jurisdiction”).

9 Plaintiffs contend that the interests of convenience, fairness, and judicial  
10 economy weigh in favor of the Court exercising supplemental jurisdiction over  
11 Plaintiffs’ state law claims. Courts have exercised discretion to retain supplemental  
12 jurisdiction over state law claims in cases where the case has been pending in federal  
13 court for an extended period of time, the court is familiar with the issues, a good deal  
14 of judicial resources has been invested in the matter, and retaining supplemental  
15 jurisdiction would avoid further duplicative proceedings in state court and delay. *See*  
16 *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082, 1089 n.4 (9th Cir. 2000)  
17 (disagreeing with the argument that the district court erred in exercising supplemental  
18 jurisdiction over the state law claims after disposing of all federal claims because the  
19 state law claims were based on the same factual allegations as the federal claims and  
20 the district court was fully familiar with the record); *Batiste v. Island Recs. Inc.*, 179  
21 F.3d 217, 228 (5th Cir. 1999) (concluding that the district court abused its discretion  
22 in declining to exercise supplemental jurisdiction over the state law claims after  
23 disposing all of the federal claims because the district court was “intimately familiar”  
24 with the claims and there were no difficult state-law issues in the remaining claims  
25 and thus, further proceedings in district court would prevent redundancy and  
26 conserve judicial resources); *Hernandez v. City of Los Angeles*, No.  
27 219CV00441CASGJSX, 2021 WL 8820856, at \*11–12 (C.D. Cal. Dec. 24, 2021)  
28 (exercising supplemental jurisdiction over the remaining state law claims in the

1 interest of fairness and judicial economy after disposing of all federal claims); *Est. of*  
2 *Brooks by & through Brooks v. City of Springfield*, No. 6:22-CV-00399-MTK, 2024  
3 WL 5238277, at \*6–7 (D. Or. Dec. 27, 2024) (finding “values of judicial economy,  
4 convenience, fairness and comity weigh strongly in favor of retaining [supplemental]  
5 jurisdiction” after the dismissal of federal claims because the case had been pending  
6 before the court for more than two and half years, the court was familiar with the  
7 facts and issues in this case, and the case did not raise any novel issues of state law).

8 This case has been pending before the Court for over two years. Additionally,  
9 the facts of this case arise from the same nucleus of facts as *L.C., et al. v. State of*  
10 *California, et al.*, case no. 5:22-cv-00949-KK-SHK, which this Court also presides  
11 over. The Court is familiar with the facts of both cases, having reviewed the evidence  
12 submitted by the parties and issued rulings on State Defendants’ Motions for  
13 Summary Judgment in this case as well as *L.C., et al. v. State of California, et al.* The  
14 *L.C.* action proceeded to the pretrial stage, with the parties submitting all pretrial  
15 documents and motions in limine and the Court issuing its ruling on the parties’  
16 motions in limine. There will substantial overlap in this case’s evidence and pretrial  
17 issues with the evidence and pretrial issues in *L.C.* such that some of the pretrial work  
18 done in *L.C.* can be transferred over to pretrial work in this case. Additionally, this  
19 case does not raise any novel state law issues. Accordingly, in the interest of fairness,  
20 convenience, and judicial economy, and given that Defendants have indicated that  
21 they are not opposed to the Court retaining supplemental jurisdiction over the state  
22 law claims, Plaintiffs request that the Court exercise supplemental jurisdiction over  
23 Plaintiffs’ remaining state law claims. Plaintiffs further request that the Court issue  
24 an order directing the parties to propose new pretrial conference dates and trial dates  
25 or set a status conference so that the parties can confer with the Court on a new final  
26 pretrial conference date and trial date.

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1 Respectfully Submitted,

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3 DATED: July 10, 2025

LAW OFFICES OF DALE K. GALIPO

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By /s/ Hang D. Le

6 Dale K. Galipo

7 Hang D. Le

Attorneys for Plaintiffs

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